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# Message Text

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ACTION NEA-10

INFO OCT-01 ISO-00 PM-04 L-03 NSC-05 CIAE-00 DODE-00

INR-07 NSAE-00 PA-01 USIA-06 PRS-01 SP-02 /040 W
---------- 088867
R 021235Z MAR 76
FM AMEMBASSY NEW DELHI
TO AMCONSUL MADRAS
INFO SECSTATE WASHDC 4372
AMCONSUL BOMBAY
AMCONSUL CALCUTTA

LIMITED OFFICIAL USE NEW DELHI 3154

E.O. 11652: N/A
TAGS: PINT, IN
SUBJ: KARUNANIDHI FILES PETITION AGAINST GOI

1. WE ARE POUCHING TO MADRAS ONLY A COPY OF 100-PAGE PETITION FILED ON BEHOLF OF FORMER TAMIL NADU CHIEF MINISTER KARUNANIDHI CHALLENGING ON GROUNDS OF MALA FIDES THE VALIDITY OF THE PROCLAMATION OF PRESIDENT'S RULE IN TAMIL NADU. THE PETITION IS DATED FEB. 25 AND WAS FILED IN THE DELHI HIGH COURT. IT SEEKS TO REFUTE THE GROUNDS FOR THE PROCLAMATION THROUGH EXTENSIVE DOCUMENTATION RANGING FROM ELECTION STATISTICS TO PAS SPEECHES BY GOVERNOR SHAH (WHO IS THE REPRESENTATIVE OF THE PRESIDENT IN THE STATE) COM-PLIMENTING DMK PROGRAMS. GOVERNMENT LAWYERS ARE ARGUING IN COURT THAT ARTICLE 356 OF THE CONSTITUTION HOLDS THAT PRESIDENT MAY ISSUE A PROCLAMATION OF EMERGENCY IF HE "IS SATISFIED THAT A SITUATION HAS ARISEN IN WHICH THE GOVERNMENT OF THE STATE CANNOT BE CARRIED ON IN ACCORDANCE WITH THE PROVISIONS OF THE CONSTITUTION." THIS REQUIREMENT WAS CLEARLY SATISFIED, THEY CLAIM. GOVERNMENT LAWYERS ARE ALSO POINTING TO THE 38TH AMENDMENT TO THE CONSTITUTION PASSED AFTER THE PROCLAMATION OF NATIONAL EMERGENCY LAST JUNE WHICH STATES THAT "THE SATISFACTION OF THE PRESIDENT" MENTIONED
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IN ARTICLE 356 "SHALL BE FINAL AND CONCLUSIVE AND SHALL

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NOT BE QUESTIONED IN ANY COURT ON ANY GROUND." HOWEVER, IT IS STILL POSSIBLE THAT THE DELHI HIGH COURT WILL AGREE TO HEAR KARUNANIDHI'S CASE.

2. FOR MADRAS: WE HAVE HEARD THE MADRAS HIGH COURT HAS ACCEPTED AT LEAST ONE WRIT PETITION CHALLENGING THE VALIDITY OF PRESIDENT'S RULE IN TAMIL NADU. WE WOULD APPRECIATE RECEIVING ANY INFORMATION YOU MAY BE ABLE TO OBTAIN ON THE STATUS OF THIS OR OTHER CASES ACCEPTED BY THE MADRAS HIGH COURT.
SAXBE

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**To:** MADRAS
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